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Attorneys for Defendant
TREVOR JAMES KIRK

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TREVOR JAMES KIRK,

Defendant.

Case No. 24-cr-00527-SVW

**DEFENDANT TREVOR KIRK'S
NOTICE OF MOTION AND
UNOPPOSED MOTION FOR BAIL
PENDING APPEAL; 18 U.S.C. §
3143; FRAP 9(b); DECLARATION
OF COUNSEL**

DATE: July 21, 2025

TIME: 11:00 a.m.

Courtroom of the Honorable Stephen V.
Wilson

PLEASE TAKE NOTICE that on July 21, 2025, at 11:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Stephen V. Wilson, United States District Judge, defendant Trevor James Kirk, by and through is attorneys of record, Tom Yu, Edward M. Robinson, and Brian A. Robinson, will move for bail pending appeal.

This motion is based upon the attached memorandum of law, all filed and records in this matter, and any other evidence or argument presented to the Court at a hearing on this motion.

Respectfully submitted,

DATED: July 7, 2025

By */s/ Brian A. Robinson*

Brian A. Robinson

Edward M. Robinson

Tom Yu

Attorneys for Defendant

Trevor James Kirk

INTRODUCTION

On June 3, 2025, the Court sentenced Mr. Kirk to 4 months in custody, to be followed by one year of supervised release with various terms and conditions. On June 6, 2025, Mr. Kirk filed a Notice of Appeal. (Doc. 112.) Mr. Kirk now moves the Court for bail pending appeal. Mr. Kirk poses no danger to the community, and given that his family, community ties, and support system all live in Los Angeles County, he poses no flight risk. For the entire time this case has been pending, Mr. Kirk has been released on bond and has never attempted to flee.

Moreover, Mr. Kirk raises substantial questions likely to result in reversal or new trial and are most definitely not for the purpose of delay. The Court need not agree that any errors were committed or that Mr. Kirk's conviction will be reversed on appeal; the Court need only find that the issues to be raised on appeal are fairly debatable. The validity of Mr. Kirk's conviction is certainly subject to fair debate.

ARGUMENT

Under 18 U.S.C. § 3143(b) the district court shall order the continuation of release on personal recognizance or modify bond conditions for a defendant who has filed an appeal if the court finds:

(A) By clear and convincing evidence that the defendant is not likely to flee or pose a danger to others and the community; and

(B) That the defendant's appeal is not for purposes of delay and raises a substantial question likely to result in (1) reversal; (2) an order for new trial; (3) a sentence that does not include a term of imprisonment; or (4) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

18 U.S.C. § 3143(b)(1).

If the Court makes such findings, granting bail pending appeal is mandatory. *Id.* ("If the judicial officer makes such findings, such judicial officer shall order the release

1 of the person in accordance with section 3142(b) or (c) of this title...”) These
2 conditions for bail pending appeal are met here.

3 **I. There is Clear and Convincing Evidence that Mr. Kirk is Not Likely to**
4 **Flee or Pose a Danger to the Safety of Others of the Community if He is**
5 **Released Pending Appeal.**

6 Mr. Kirk is neither a flight risk nor danger to the community. He is a first-time
7 offender with no prior criminal history. The Court has acknowledged that Mr. Kirk
8 does not pose a flight risk and after sentencing has allowed him to remain out of
9 custody with a surrender date of August 28, 2025. Moreover, Mr. Kirk has never made
10 any attempt to flee, he has made every court appearance as ordered and has abided by
11 all release conditions.

12 Most importantly, Mr. Kirk has lived his entire life in Los Angeles County and
13 continues to have strong community ties to Los Angeles County. Mr. Kirk lives with
14 his wife and two young children, a 6-year-old daughter and a 3-year-old son. Mr.
15 Kirk’s wife is a stay-at-home mom, and his family relies on him both emotionally and
16 financially. Mr. Kirk is the sole financial supporter of his family. Currently, he works
17 fulltime doing demolition work for Conejo Restoration, a mold and fire restoration
18 company in Newbury Park.

19 As such, this is clear and convincing evidence that if bail is granted pending
20 appeal, Mr. Kirk will not flee and will not pose a danger to the community or any other
21 person.

22 **II. The Appeal is Not for Delay and Raises Substantial Questions.**

23 The Ninth Circuit has repeatedly made clear that a defendant need not establish
24 in their motion for bail pending appeal that their claims will, in fact, result in a reversal
25 of their conviction or a reduction in sentence. Instead, they need only show that they
26 have “a non-frivolous issue that, if decided in his favor, would likely result in
27 reversal[,]” a new trial, or a reduced sentence for less than the expected duration of the
28 appellate process. *United States v. Garcia*, 340 F.3d 1013, 1020 n.5 (9th Cir. 2003).

1 For purposes of bail pending appeal, therefore, the relative merits of a
2 defendant's appellate claims are not what is key. As the Ninth Circuit explained in
3 *Garcia*, the analysis "does not involve assessing the likelihood that a reversal will occur
4 in the particular case." 340 F.3d at 1020 n.5 (citing *United States v. Handy*, 761 F.2d
5 1279, 1280 (9th Cir. 1985)).¹ Rather, the Court must decide whether the defendant has
6 raised a "substantial question," which has been defined as one that "present[s] unique
7 facts not plainly covered by the controlling precedents" or "is one of more substance
8 than would be necessary to a finding that it was not frivolous." *Handy*, 761 F.2d at
9 1281, 1283; *see also United States v. Wheeler*, 795 F.2d 839, 840 (9th Cir. 1986) (a
10 "'substantial' question is one that is fairly debatable or fairly doubtful.").

11 Thus, to prevail on a motion for bail pending appeal, Mr. Kirk need only show
12 that his motion raises non-frivolous claims of such a ponderable legal significance that,
13 if decided in his favor, would result in a reversal or a new trial.

14 A. It is at Least Fairly Debatable Whether the Government Presented
15 Sufficient Evidence to Sustain a Conviction on the Offense Charged.

16 Mr. Kirk was convicted of Deprivation of Rights Under Color of Law under 18
17 U.S.C. § 242. This statute requires that the government prove beyond a reasonable
18 doubt that Mr. Kirk deprived J.H. of a right which is secured or protected by the
19 Constitution or laws of the United States—in this case, J.H.'s right to be free from the
20 use of unreasonable force, and that Mr. Kirk acted willfully to deprive J.H. of such a
21 right. To prove that Mr. Kirk acted willfully, the government was required to prove
22 beyond a reasonable doubt that Mr. Kirk acted voluntarily and intentionally, with a
23 specific intent to use more force than necessary under the circumstances.

24
25 ¹ In fact, in *Handy*, the Court expressly rejected the government's position that bail
26 pending appeal is limited to defendants who can demonstrate that they will probably
27 prevail on appeal, calling such a proposition "untenable." 761 F.2d at 1280. The Court
28 explained that "Congress did not intend to limit bail pending appeal to cases in which
the defendant can demonstrate at the outset of appellate proceedings that the appeal will
probably result in reversal or an order for a new trial." *Id.*

1 Here, it is at least fairly debatable that the government failed present evidence
2 sufficient to prove beyond a reasonable doubt that Deputy Kirk deprived J.H. of her
3 right to be free from the use of unreasonable force and that Deputy Kirk acted willfully.

4 **a. Excessive Force**

5 The Court instructed the jury on multiple factors to be considered when
6 determining excessive force. While not exclusive, these factors include “the severity of
7 the crime, if any; the extent, if any, to which [J.H.] posed a threat to the safety of
8 [Deputy Kirk] or to any other person; the extent, if any, to which [J.H.] was physically
9 resisting arrest or attempting to flee at the time force was used; the extent of the injury
10 suffered, if any, by [J.H.]; and the effort made, if any, by [Deputy Kirk] to temper or
11 limit the amount of force.” (Doc. 53, p. 10).

12 The evidence is uncontroverted that J.H. was an identified suspect in an in-
13 progress felony robbery call for service. The Sheriff’s dispatch also informed Deputy
14 Kirk that the suspects had been fighting with store security. Armed with this
15 information, per his training, Deputy Kirk attempted to legally detain J.H. While
16 Deputy Kirk approached J.H., she was recording his and his partner deputies’ detention
17 of the other identified robbery suspect. Per his training, Deputy Kirk attempted to
18 secure J.H.’s hands as part of her legal detention despite J.H.’s insistence that Deputy
19 Kirk could not touch her. The evidence at trial was undisputed that Deputy Kirk had a
20 right and an obligation to detain J.H. and that her proclamation was a form of resistance
21 and legally indefensible. As testified by the government’s witness, Deputy Jose Diaz,
22 the Sheriff’s Department trainer in tactical communications, it is not escalating force to
23 detain a suspect. (RT, 02-04-25, pg. 126.)

24 While attempting to legally detain J.H., J.H. swung her arm and hit Deputy Kirk,
25 thereby escalating the situation. In light of J.H.’s immediate resistance and assaultive
26 behavior, Deputy Kirk grabbed J.H.’s arm to ensure she would not attempt to hit him
27 again. J.H. continued to actively resist Deputy Kirk’s attempts to gain control. Despite
28 being told to “stop” a number of times, J.H. continued to actively resist and, as trained,

1 Deputy Kirk performed a takedown to overcome J.H.'s resistance. While on the
2 ground, J.H. continued to actively resist by attempting to get up and ignoring Deputy
3 Kirk's vocal commands. Deputy Kirk, in an attempt to gain J.H.'s compliance and in
4 accordance with his training, performed a "ruse" by threatening to punch J.H. if she
5 continued to resist. Despite J.H.'s failure to heed Deputy Kirk's ruse, Deputy Kirk did
6 not punch J.H. and resorted to a lesser form of force, per his training, O.C. spray.
7 Deputy Kirk's first attempt to use O.C. spray on J.H. missed her eyes and hit the side of
8 her head so he deployed his O.C. spray again. Finally, Deputy Kirk successfully
9 detained J.H., and per his training, immediately radioed for an ambulance for J.H.

10 This series of events does not prove beyond a reasonable doubt that Deputy Kirk
11 used excessive force. Rather, it proves that Deputy Kirk used the minimal amount of
12 force necessary to execute his duties as a law enforcement officer, as he was trained,
13 and detain a resistant robbery suspect. As the government's own expert, Rodger Clark,
14 made clear under cross-examination, "[i]f it is that [a suspect] refuse[s] to consent to
15 the detention, which is different than arrest, then force can be used—then force could
16 be used to keep them in place, pending the investigation." (RT, 02-05-25, pg. 168).
17 This is precisely what occurred in this case.

18 Throughout the trial, the government argued that Deputy Kirk retaliated against
19 Ms. Houseton for filming him. The government's argument to the jury, however,
20 refused to acknowledge the fact that Deputy Kirk, at the time he placed his hands on
21 J.H., had a legal right and obligation to physically detain her. The government's
22 witnesses made this clear. As Sergeant Ismael Opina, the government's use of force
23 witness, testified on cross-examination, deputies are not trained to wait for a robbery
24 suspect to finish recording before detaining that suspect. (RT, 02-05-25, pg. 62). The
25 Sheriff's Department policy on retaliatory force used on someone videotaping deputies
26 only concerns innocent bystanders, it does not apply to a robbery suspect that is being
27 detained. *Id.* at 63.

1 J.H.'s active resistance allowed Deputy Kirk to use force to effectuate the lawful
2 detention. Viewing the evidence as the law requires, not with the benefit of 20/20
3 hindsight but in deference to the realities of law enforcement, it is at least fairly
4 debatable that the government presented sufficient evidence to prove beyond a
5 reasonable doubt that Deputy Kirk deprived J.H of her right to be free from the use of
6 unreasonable force.

7 **b. Willfulness**

8 The sufficiency of the evidence with respect to willfulness suffers from the same
9 infirmity as the evidence concerning excessive force. As with excessive force, the
10 government's argument that Deputy Kirk acted willfully hitched almost entirely to the
11 proposition that Deputy Kirk's physical contact with J.H. was motivated by his anger
12 towards her and his desire to retaliate because she was filming him. However, the
13 government's witnesses testified unequivocally that pre-detention commands were not
14 required per policy and that, again, Deputy Kirk had a legal right and obligation to
15 detain J.H. to investigate the 'ongoing robbery' of suspects who were fighting with
16 store security. The evidence at trial established that Deputy Kirk was acting as he had
17 been trained.

18 Deputy Jose Diaz was called as a witness for the government to testify to the
19 training Deputy Kirk received regarding "strategic communications." Deputy Diaz
20 testified that, while preferable, deputies are not required to engage in verbal
21 communications with a suspect as opposed to going hand on to detain. When asked if
22 deputies are instructed on using "communications as opposed to going hands on...",
23 Deputy Diaz testified; "Not necessarily opposed. Again, there is a constant assessment
24 and reassessment when they are in any situation or incident, and they have to make that
25 judgment call on their own to say, if they chose to use force, then have to explain why."
26 (RT, 02-04-25, pg. 100). Additionally, Deputy Diaz testified that "if I have information
27 that [someone] may have been involved in a crime, then I would want to detain them
28 and start asking questions about if there was an involvement with them or not." *Id.* at

1 101-102. Deputy Diaz further testified that simply because someone does not want to
2 be detained does no mean deputies have to stop what they are doing. Under Sheriff's
3 Department policy, deputies have a duty to apprehend criminals and they cannot just let
4 them walk away. *Id.* at 124.

5 On cross-examination, Deputy Diaz testified regarding the way deputies are
6 trained to respond to robbery calls specifically. In testimony that properly
7 contextualized the preference for, but not the need to de-escalate to conform to policy,
8 Deputy Diaz testified that, on a robbery call, deputies are trained to secure suspects, to
9 handcuff them and pat them down for weapons. Exigency is not required to secure the
10 scene; it is for officer safety. *Id.* at 126. Critically, Deputy Diaz testified, detaining a
11 suspect is not the same as escalating force. *Id.* Before engaging in any investigation,
12 deputies are trained they have to detain the suspect first. *Id.* at 127.

13 Sergeant Opina was called as a witness for the government to testify to the
14 training Deputy Kirk received regarding "use of force." On direct examination,
15 Sergeant Opina testified that deputies are trained "that they do not have a duty to
16 retreat." (RT, 02-05-25, pg. 14). Regarding takedowns, Sergeant Opina made it clear
17 that "takedowns are dynamic in nature," and deputies "can't always train for where [a]
18 person lands. The goal of a takedown is to get the person to the ground to gain safe
19 control and be able to control them." *Id.* at 29. Furthermore, on cross-examination,
20 Sergeant Opina testified that if a suspect makes "a swapping" motion, as J.H. did in this
21 case, that is a "factor to consider on a threat level." *Id.* at 57.

22 In this case, it is at least fairly debatable that the evidence presented at trial was
23 insufficient to prove beyond a reasonable doubt that Deputy Kirk acted wilfully, that is
24 voluntarily and intentionally, with a specific intent to use more force than necessary
25 under the circumstances. The evidence makes it undeniably clear that Deputy Kirk used
26 the amount of force necessary to detain a resistant robbery suspect prior to an
27 investigation.
28

CONCLUSION

For the reasons set forth above, Deputy Kirk respectfully requests that this Court grant his motion for bail pending the resolution of his appeal.

Respectfully submitted,

DATED: July 7, 2025

By */s/ Brian A. Robinson*

Brian A. Robinson

Edward M. Robinson

Tom Yu

Attorneys for Defendant

Trevor James Kirk

DECLARATION OF COUNSEL

I, Brian A. Robinson, hereby declare as follows:

1. I am counsel of record for Trevor James Kirk in the above-referenced matter, case no. 24-cr-00527-SVW.

2. Assistant United States Attorney Rob Keenan has informed defense counsel that the government does not oppose this motion for bail pending appeal.

I declare under penalty of perjury that the above is true and correct. Executed this 7th day of July 2025, in Torrance, California.

By */s/ Brian A. Robinson*

Brian A. Robinson
Attorney for Defendant
Trevor James Kirk